IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2220 OF 1995

IN

CRIMINAL WRIT PETITION NO.1032 OF 1987

Dwarkanath D.Shah .. Petitioner

Versus

Sripatharao Bhavanrao

Pantapratinidhi and Ors. .. Respondents

Mr.S.B.Deshmukh with A.V.Anturkar for petitioner

Mr.S.S.Tatkare, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 29th November 2005.

P.C.

. Applicant is original respondent No.1 in the petition. Original petitioners who are arrayed as respondent Nos. 1 to 4 had filed above writ petition in this Court under Article 227 of the Constitution of India read with section 482 of Cr.P.C. Petitioners were aggrieved by an order directing issuance of process passed by Judicial Magistrate, First Class 9th Court in Case No.72 of 1984. That complaint alleged offence punishable under section 120B, 384, 385, 388, 211 read with 34 and 109 of I.P.C.

2. Review applicant was respondent No.1 in the said writ petition. He is original complainant.

3. Said writ petition was placed before learned Single Judge (M.L.Pendse, as His Lordship then was) and by a judgement and order dated 22nd February 1993 he was pleased to pass an order

allowing the writ petition and quashing the order passed by the Magistrate issuing process. The learned Judge has clearly observed that offences alleged by the review applicant herein are not made out from a reading of the complaint. That judgement is pronounced on February 22, 1993.

4. Review applicant has filed present application seeking review of judgement and order passed in the said petition. Review application is filed on 14th August 1995.

5. Office has raised an objection as to how review would be maintainable in this case. The matter was adjourned from time to time to enable applicants' Counsel to make submissions on the maintainability of this application. Mr.Deshmukh, learned Advocate appearing in support of this application urges that applicant has invoked jurisdiction of this Court for review of the order passed in the said petition and that

is permissible in law. He states that writ petition under Article 227 was filed in this case. Merely because provisions of Section 482 of Cr.P.C. were invoked and the order impugned was the one issuing process by a Magistrate on a criminal complaint, that does not affect maintainability of the petition.

6. In my view, provisions of review jurisdiction cannot be indirectly invoked as is done in the instant case. On the face of it, present application is for seeking review of this Court’s order not just on writ petition filed under 227 but invoking this Court’s inherent power to quash an order directing issuance of process as well. That order, admittedly, was in a criminal complaint which was filed by the present applicant. Provisions of article 227 of the Constitution of India have been invoked, not independently but with section 482 of Cr.P.C. Power conferred on this Court vide section 482

Cr.P.C. is expressly to make such orders as may be necessary to give effect to any order under the code or to prevent abuse of the process of any court or otherwise to secure ends of justice. That power itself is held to be exceptional and its scope is now well settled. The Code of Criminal Procedure under which this power is conferred does not provide for any review.

7. In the light of the aforesaid, in my view, merely because in the facts and circumstances of the present case, Article 227 has been invoked that cannot be of any assistance in entertaining the present review application. More so, when on plain reading of judgement of this Court, it is clear that this Court exercised its powers under section 482 of Cr.P.C. Review application, therefore, is dismissed as not maintainable.

(S.C.DHARMADHIKARI, J)